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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,046	07/06/2001	Geert Maertens	2752-51	7316

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EXAMINER

BROWN, TIMOTHY M

ART UNIT PAPER NUMBER

1648

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/899,046

Applicant(s)

MAERTENS ET AL.

Examiner

Tim Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 45-56 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 45-56, drawn to an antibody that recognizes a type 3a HCV antigen wherein the antigen consists of five or more amino acids from the region spanning positions 140 to 319 of the Core/E1 region, classified in class 435, subclass 235.1.
- II. Claims 45-56, drawn to an antibody that recognizes a type 3a HCV antigen wherein the antigen consists of five or more amino acids from the region spanning positions 1556 to 1650, or positions 1556 to 1674, of the NS3/4 region, classified in class 435, subclass 235.1.
- III. Claims 45-56, drawn to an antibody that recognizes a type 3a HCV antigen wherein the antigen consists of five or more amino acids from the region spanning positions 1632 to 1674, of the NS3/4 region, classified in class 435, subclass 235.1.
- IV. Claims 45-56, drawn to an antibody that recognizes a type 3c HCV antigen wherein the antigen consists of five or more amino acids from the region spanning positions 1 to 115 of the Core region, classified in class 435, subclass 235.1.
- V. Claims 45-56, drawn to an antibody that recognizes a type 3c HCV antigen wherein the antigen consists of five or more amino acids from the region spanning positions 2661 to 2753 of the NS5B region, classified in class 435, subclass 235.1.

Groups I-V are patentably distinct because they are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the inventive antibodies have different effects in that they recognize

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structurally distinct HCV epitopes. Moreover, each of the antibodies of Groups I-V are distinguished by a unique amino acid sequence and unique physical conformation. Groups I-III are further distinguished from Groups IV and V because Groups I-III recognize antigens from a different HCV serotype (type 3a) than Groups IV-V which recognizes HCV type 3c. Finally, the inventions of Groups I-IV are not disclosed as being used together. Groups I-V are therefore patentably distinct.

Election of the invention of Group I requires the further election of one of the following species:

- a. the region of Core/E1 spanning positions 140 to 319 identified by SEQ ID NO:14
- b. the region of Core/E1 spanning positions 140 to 319 identified by SEQ ID NO:16
- c. the region of Core/E1 spanning positions 140 to 319 identified by SEQ ID NO:18
- d. the region of Core/E1 spanning positions 140 to 319 identified by SEQ ID NO:20
- e. the region of Core/E1 spanning positions 140 to 319 identified by SEQ ID NO:24

Election of the invention of Group III requires the further election of one of the following species:

- a. the region of NS3/4 spanning positions 1632 to 1764 identified by SEQ ID NO:32
- b. the region of NS3/4 spanning positions 1632 to 1764 identified by SEQ ID NO:36

Each of the preceding species is patentably distinct. This results because each antigen correlates to a distinct HCV antibody having a unique amino acid sequence and a unique conformation. Moreover, the antibodies produced by the preceding species would each have a materially different activity since they would recognize completely divergent epitopes.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 45 and 46 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Brown whose telephone number is (571) 272-0773. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on (571) 272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tim Brown
Examiner
Art Unit 1648

tmb


ULRIKE WINKLER, PHD.
PATENT EXAMINER 6/1/04